

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

**NOTICE OF MOTION**

- versus -

Case No. S1 07 Cr. 566 (GBD)

DAVID WILKINS, KEITH CLARK, a/k/a  
"Fat Boy," TERRENCE MCGEE, a/k/a "Tuffy,"  
HORACE HEDGEPEETH, a/k/a "Monte," SHANTA  
BROWN, JAMAR JONES, a/k/a "Pooh bear," a/k/a  
"Pooh," TORY DELANEY, ROBIN MCMAHON,  
a/k/a "Marlon," JAMES GILLIARD, a/k/a "Sos,"  
a/k/a "Sosa," and MARK ATWATER,

Defendants.

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**PLEASE TAKE NOTICE**, that the defendant, HORACE HEDGEPEETH, by his attorney EDGARDO RAMOS, ESQ., of DAY PITNEY, LLP and upon the annexed memorandum of law, affidavits, and declarations and all papers and proceedings heretofore had herein, moves, before the HONORABLE GEORGE B. DANIELS United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, for:

1. An ORDER suppressing evidence seized on May 23, 2007 as a result of a search at 247 W. 149th Street, House #3, Apt. 4B, New York, New York;
2. An ORDER suppressing his post-arrest statement on the grounds that it was not the product of a valid waiver of rights;
3. An ORDER granting his request for a bill of particulars;
4. An ORDER permitting him to join in co-defendant's motions; and

5. An ORDER granting such other and further relief as the Court may deem just and proper.

DATED: February 1, 2008  
NEW YORK, NEW YORK

Respectfully Submitted,

/s/ Edgardo Ramos  
Edgardo Ramos, Esq.  
Day Pitney, LLP  
7 Times Square  
New York, New York  
Tel.: (212) 297-2452  
Fax.: (212) 916-2940  
Eramos@daypitney.com  
Attorney for Defendant  
Horace Hedgepeth

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

Case No. S1 07 Cr. 566 (GBD)

**DECLARATION**

DAVID WILKINS, KEITH CLARK, a/k/a  
"Fat Boy," TERRENCE MCGEE, a/k/a "Tuffy,"  
HORACE HEDGEPEETH, a/k/a "Monte," SHANTA  
BROWN, JAMAR JONES, a/k/a "Pooh bear," a/k/a  
"Pooh," TORY DELANEY, ROBIN MCMAHON,  
a/k/a "Marlon," JAMES GILLIARD, a/k/a "Sos,"  
a/k/a "Sosa," and MARK ATWATER,

Defendants.

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**EDGARDO RAMOS, ESQ.**, declares under the penalty of perjury pursuant to 28 U.S.C.  
§ 1746, that the following is true and correct:

1. I am a member of Day Pitney LLP. I have been appointed pursuant to the  
Criminal Justice Act to represent the defendant Horace Hedgepeth.

2. This declaration is based on information and belief, the sources of which include,  
the indictment, material produced in discovery, all papers filed heretofore herein, and  
conversations with defendant and prosecutors assigned to this case.

**Seizure of Firearm**

3. On May 23, 2007 at approximately 6:00 a.m., law enforcement officers raided the  
apartment where Mr. Hedgepeth resided located at 247 W. 149th Street, House #3, Apt. 4B, New  
York, New York.

4. During that raid, Special Agent Daniel Dyer of the Drug Enforcement Administration seized a .40 caliber Glock semi-automatic handgun from the inside pocket of black leather jacket that was hanging in the closet of the rear bedroom. See a true and complete copy of a Drug Enforcement Administration Report of Investigation, dated May 23, 2007, attached hereto as Exhibit A.

**Post-Arrest Statement**

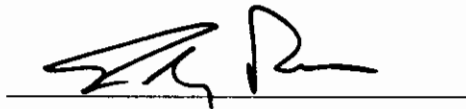
5. On May 23, 2007 at approximately 7:10 a.m., Mr. Hedgepeth was arrested without incident in the rear parking lot of his place of employment. Mr. Hedgepeth was subsequently transported for processing and arraignment.

6. While under law the custody of law enforcement officers, Mr. Hedgepeth was advised of his Miranda rights.

7. Mr. Hedgepeth was thereafter questioned by law enforcement officers without having knowingly or voluntarily waived his Miranda rights.

8. A true and complete copy of a letter from Assistant U.S. Attorney Jillian Berman to Edgardo Ramos, dated August 8, 2007 is attached hereto as Exhibit B.

New York: New York  
February 1, 2008

A handwritten signature in black ink, appearing to read 'Edgardo Ramos', is written over a horizontal line.

Edgardo Ramos

Exhibit - A

U.S. Department of Justice  
Drug Enforcement Administration

## REPORT OF INVESTIGATION

Page 1 of 4

1. Program Code	2. Cross File	Related Files	3. File No. C1-05-Z008	4. G-DEP Identifier YNC3G
5. By: Daniel J. Dyer, SA At New York Field Division OCDE Strike Force	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		6. File Title LEBRON, Jason	
7. <input type="checkbox"/> Closed <input type="checkbox"/> Requested Action Completed <input type="checkbox"/> Action Requested By:			8. Date Prepared 05/23/07	
9. Other Officers: SA Salvatore Ganci, Det. Vincent Andrasko, SA John Gray, SA Jason Daus, GS Matthew Donahue, ATF SA Wen Jiang Yan, IRS SA Julius Garcia, IRS SA C. Tchorznicki				
10. Report Re: Acquisition of Exhibits N-71, N-72, N-73, N-74 and N-75				

DETAILS

- Reference DEA-6 by SA Salvatore Ganci titled "Arrest of Horace HEDGEPTH on 05/23/07" dated 05/23/07.
- On 05/23/2007 at approximately 6:15 AM, agents from the New York Field Division Organized Crime Drug Enforcement Strike Force (NY-OCDESF) entered the residence at 247 West 149<sup>th</sup> Street, Apartment 4-B, New York, NY pursuant to an arrest warrant for Horace HEDGEPTH issued in the Southern District of New York.
- Consent to search the residence was given by Joseph DEFOSETT who claimed to be the owner of the apartment. No consent to search form was signed by DEFOSETT.
- SA Daniel J. Dyer searched a rear bedroom that was being occupied by a minor child who had told SA Dyer that he was the son of Horace HEDGEPTH. The minor child further advised SA Dyer that Horace HEDGEPTH resided in that same bedroom.
- At approximately 6:30 AM, SA Dyer found exhibit N-71, an unloaded Glock Model 27, 40 caliber pistol bearing serial number FDY187, located in the inside pocket of a black leather jacket that was hanging in the closet of the rear bedroom. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as

11. Distribution: Division NYFD	12. Signature (Agent)  Daniel J. Dyer, SA	13. Date
District	14. Approved (Name and Title) Matthew G. Donahue Group Supervisor	15. Date
Other SARI		

DEA Form - 6  
(Jul. 1996)DEA SENSITIVE  
Drug Enforcement Administration

djd

This report is the property of the Drug Enforcement Administration.  
Neither it nor its contents may be disseminated outside the agency to which loaned.

Previous edition dated 8/94 may be used.

908

U.S. Department of Justice  
Drug Enforcement Administration

<b>REPORT OF INVESTIGATION</b> <i>(Continuation)</i>	1. File No. C1-05-2008	2. G-DEP Identifier YNC3G
	3. File Title LEBRON, Jason	
4. Page 2 of 4		
5. Program Code	6. Date Prepared 05/23/07	

evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.

6. At approximately 6:35 AM, SA Dyer found exhibit N-72, a 40 caliber Glock magazine loaded with 14 rounds of commercially available jacketed hollow point bullets. SA Dyer unloaded the magazine and maintained the 14 rounds of ammunition as exhibit N-73. SA Dyer maintained custody of both exhibit N-72 and N-73 and processed the exhibits as evidence. On a later date, SA Dyer transferred custody of exhibits N-72 and N-73 to the NYFD Non-drug Evidence Custodian for safekeeping.
7. At approximately 6:40 AM, SA Dyer found Exhibit N-74, two partially full boxes of 40 caliber ammunition and one partially full box of 9mm ammunition in a shoe box in the same closet of the rear bedroom. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.
8. Miscellaneous documents bearing the name Horace HEDGEPEETH, exhibit N-75, were found by SA Dyer in the same rear bedroom as the Glock pistol. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.
9. An ATF trace of the Glock Model 27 bearing serial number FDY187 indicated that the pistol is part of two closed ATF investigations. Reference ATF Investigation numbers 765020-03-0053 and 766030-03-0027. ATF New York Field Office was notified by SA Dyer.

**CUSTODY OF EVIDENCE:**

10. Exhibit N-71 is a Glock Model 27 40 caliber pistol. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as



U.S. Department of Justice  
Drug Enforcement Administration

<b>REPORT OF INVESTIGATION</b> (Continuation)	1. File No. C1-05-2008	2. G-DEP Identifier YNC3G
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5. Program Code		

evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.

11. Exhibit N-72 is a Glock 40 caliber magazine loaded with 14 rounds of ammunition. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.
12. Exhibit N-73 is 14 rounds of 40 caliber ammunition taken from exhibit N-72. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.
13. Exhibit N-74 is three boxes of ammunition. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.
14. Exhibit N-75 is miscellaneous documents. SA Dyer seized and maintained custody of the exhibit and processed the exhibit as evidence. On a later date, SA Dyer transferred custody of the exhibit to the NYFD Non-drug Evidence Custodian for safekeeping.



U.S. Department of Justice  
Drug Enforcement Administration

<b>REPORT OF INVESTIGATION</b> <i>(Continuation)</i>	1. File No. C1-05-Z008	2. G-DEP Identifier YNC3G
	3. File Title LEBRON, Jason	
4. Page 4 of 4		
5. Program Code	6. Date Prepared 05/23/07	

# Exhibit - B



United States Attorney  
Southern District of New York

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

August 8, 2007

BY HAND DELIVERY

Edgardo Ramos  
Day Pitney LLP  
7 Times Square  
New York, NY 10036-7311

Re: United States v. Horace Hedgepeth  
07 Cr. 566 (GBD)

Dear Mr. Ramos:

This letter provides continuing discovery pursuant to your request and Rule 16(a) of the Federal Rules of Criminal Procedure in the above-referenced matter.

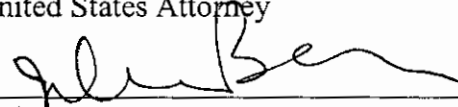
Please be advised that following the defendant's arrest, and after being advised of and waiving his Miranda rights, the defendant stated, in sum and substance, the following: he received the gun in Pennsylvania in exchange for four bags of crack; he needed the gun for protection; and he carried the gun when he went to the projects because he had gotten shot.

Please contact me at your earliest convenience concerning the possible disposition of this matter or any further discovery which you may request.

Sincerely,

MICHAEL J. GARCIA  
United States Attorney

By:

  
Jillian B. Berman  
Assistant United States Attorney  
(212) 637-2197 (phone)  
(212) 637-0084 (fax)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

Case No. S1 07 Cr. 566 (GBD)

**AFFIDAVIT**

DAVID WILKINS, KEITH CLARK, a/k/a  
"Fat Boy," TERRENCE MCGEE, a/k/a "Tuffy,"  
HORACE HEDGEPEETH, a/k/a "Monte," SHANTA  
BROWN, JAMAR JONES, a/k/a "Pooh bear," a/k/a  
"Pooh," TORY DELANEY, ROBIN MCMAHON,  
a/k/a "Marlon," JAMES GILLIARD, a/k/a "Sos,"  
a/k/a "Sosa," and MARK ATWATER,

Defendants.

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STATE OF NEW YORK     )  
                                  )     ss.:  
COUNTY OF NEW YORK    )

**JOSEPH W. DEFOSSETT** being duly sworn deposes and says:

1.     My name is Joseph W. DeFossett.
2.     I reside at 247 W. 149th Street, House #3, Apt. 4B, New York, New York  
("the apartment"). I have lived in the apartment for approximately 40 years.
3.     In May 2007, I resided in the apartment with the defendant Horace  
Hedgepeth, Mr. Hedgepeth's two sons – Lamont, aged 12, and Jaquan aged 11 – and  
Christopher Callahan.

4. On May 23, 2007, at approximately 6:00 a.m., I was awakened by the sound of pounding on the apartment door followed by the entrance of several law enforcement officers ("the officers").

5. Mr. Hedgepeth was not present in the apartment at that time.

6. Immediately after entering the apartment, the officers questioned me about the whereabouts of Mr. Hedgepeth. I answered all of the officers' questions to the best of my ability. I also observed as officers questioned Mr. Hedgepeth's eldest son, Lamont, about his father.


7. Sometime thereafter, I observed several officers searching Mr. Hedgepeth's bedroom.

8. At no time did any officer ask for my consent, nor did I give consent, to a search of the apartment.

New York: New York  
January 31, 2008

  
Joseph W. DeFossett

Sworn to before me this 31<sup>st</sup> day  
of January, 2008

  
Notary Public

ELISHA MCCOY  
NOTARY PUBLIC NEW YORK  
NO. 01M6113311  
QUALIFY EXACT  
MY COMMISSION EXPIRES 01, 22, 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Case No. S1 07 Cr. 566 (GBD)

- v. -

**AFFIDAVIT**

DAVID WILKINS, KEITH CLARK, a/k/a  
"Fat Boy," TERRENCE MCGEE, a/k/a "Tuffy,"  
HORACE HEDGEPEETH, a/k/a "Monte," SHANTA  
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Defendants.

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STATE OF NEW YORK     )  
                                  )     ss.:  
COUNTY OF NEW YORK    )

**Edgardo Ramos**, being duly sworn deposes and says:

1. My name is Edgardo Ramos and I am a member of Day Pitney LLP.
2. I have been appointed pursuant to the Criminal Justice Act to represent the defendant Horace Hedgepeth in this matter.
3. I submit this Affidavit pursuant to Local Rule 16.1 of the Local Rules of the United States District Court for the Southern District of New York, which requires moving counsel to confer with opposing counsel prior to the filing of a motion for a bill of particulars.

4. On Thursday, January 31, 2008, your deponent contacted Assistant United States Attorney Jenna Dabbs to request that the government agree to voluntarily provide particulars concerning the allegations in Count One of the Superseding Indictment.

5. AUSA Dabbs advised that the government would not agree to provide the requested particulars voluntarily.

New York, New York  
February 1, 2008

  
\_\_\_\_\_  
Edgardo Ramos

Sworn to before me this 1<sup>st</sup> day  
of February, 2008

  
\_\_\_\_\_  
Notary Public

**MEAGHAN DICARLO**  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 01DI6129311  
QUALIFIED IN NASSAU COUNTY  
MY COMMISSION EXPIRES JUNE 20, 2009



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- versus -

Case No. S1 07 Cr. 566 (GBD)

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HORACE HEDGEPEETH, a/k/a "Monte," SHANTA  
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a/k/a "Marlon," JAMES GILLIARD, a/k/a "Sos,"  
a/k/a "Sosa," and MARK ATWATER,

Defendants.

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**DEFENDANT HORACE HEDGEPEETH'S  
MOTION FOR A BILL OF PARTICULARS**

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Edgardo Ramos  
Day Pitney LLP  
7 Times Square  
New York, NY 10036  
Attorneys for Defendant  
Horace Hedgepeth

Defendant, Horace Hedgepeth ("Mr. Hedgepeth"), through his undersigned counsel, moves pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure for an order directing the government to file a Bill of Particulars as to the matters set forth herein. This motion is based upon the accompanying Affidavit of Edgardo Ramos pursuant to Local Rule 16.1, Memorandum of Law in Support, the pleadings and papers on file in this action, and upon such other evidence and arguments as may be presented at the hearing on this motion. In support of this motion, Mr. Hedgepeth states as follows:

1. On July 19, 2007, Mr. Hedgepeth was charged in a two-Count Superseding Indictment with conspiracy to violate the narcotics laws of the United States in violation of 21 U.S.C. § 846, and criminal possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

2. The Indictment alleges numerous overt acts in furtherance of the conspiracy charged in Count One, however, only two specifically refer to Mr. Hedgepeth. The government has advised that it intends to introduce at trial evidence that Mr. Hedgepeth engaged in additional conduct beyond the two overt acts listed in the Indictment.

3. While Count One of the Indictment clearly tracks the language of the statute, it fails to identify the specific

dates, participants, locations or substance of the alleged criminal acts.

4. The government has provided hundreds of pages of documents pursuant to Federal Rule of Criminal Procedure 16. However, the disclosure does not provide guidance regarding what the government will seek to prove at trial.

5. Details concerning the alleged criminal acts are particularly important where, as here, the conspiracy is alleged to have included ten defendants, to have contained multiple objects - distribution of cocaine and crack cocaine - and to have taken place over a period of 18 months.

6. Accordingly, the Indictment and government disclosures to date do not inform Mr. Hedgepeth of the factual basis of charges against him in sufficient detail to enable Mr. Hedgepeth to effectively prepare his defense or to minimize prejudicial surprise at trial.

7. Mr. Hedgepeth therefore requests that the Court order the government to provide the following Particulars with respect to Count One of Indictment:

(a) Identify each individual Mr. Hedgepeth is alleged to have conspired with.

(b) Identify each overt act Mr. Hedgepeth is alleged to have committed, including:

(i) The date of the alleged act;

- (ii) The location of the alleged act; and
- (iii) Additional participants, in addition to Mr. Hedgepeth, if any.

(c) Identify each instance where the government contends that Mr. Hedgepeth possessed with intent to distribute narcotics. With respect to each such instance, identify:

- (i) The date of the alleged possession;
- (ii) The location of the alleged possession;
- (iii) The person(s) from whom Mr. Hedgepeth allegedly obtained the narcotics; and
- (iv) The type and quantity of narcotics allegedly possessed.

(d) Identify each instance where the government contends that Mr. Hedgepeth distributed narcotics. With respect to each such instance, identify:


- (i) The date of the alleged distribution;
- (ii) The location of the alleged distribution;
- (iii) The person(s) to whom Mr. Hedgepeth allegedly distributed narcotics; and
- (iv) The type and quantity of narcotics allegedly distributed.

WHEREFORE Horace Hedgepeth respectfully requests that the Court order the Government to provide a Bill of Particulars as requested herein.

Respectfully submitted,

DAY PITNEY LLP  
Attorneys for Defendant  
Horace Hedgepeth

By:



EDGARDO RAMOS (er6846)  
A Member of the Firm

DATED: February 1, 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- versus -

**CERTIFICATION OF  
SERVICE**

Case No. S1 07 Cr. 566 (GBD)

DAVID WILKINS, KEITH CLARK, a/k/a  
"Fat Boy," TERRENCE MCGEE, a/k/a "Tuffy,"  
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"Pooh," TORY DELANEY, ROBIN MCMAHON,  
a/k/a "Marlon," JAMES GILLIARD, a/k/a "Sos,"  
a/k/a "Sosa," and MARK ATWATER,

Defendants.

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I, Amy J. Iannone, hereby certify that on February 1, 2007, a true copy of defendant Horace Hedgepeth's Pre-Trial Motion were filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and served by mail on anyone unable to accept electronic filings. Parties may access this filing through the Court's CM/ECF system.

/s/ Amy J Iannone  
Amy J. Iannone